

**BEFORE THE APPEALS BOARD
FOR THE
KANSAS DIVISION OF WORKERS COMPENSATION**

DAISY SPURGIN

Claimant

VS.

ATCHISON CASTING CORPORATION

Respondent

Self-Insured

Docket No. 250,757

ORDER

Respondent appeals Administrative Law Judge Robert H. Foerschler's August 3, 2001, Award. The Appeals Board heard oral argument on February 5, 2002.

APPEARANCES

Claimant appeared by her attorney, Michael D. Matteuzzi of Kansas City, Missouri. Respondent, a qualified self-insured, appeared by its attorney John B. Rathmel of Prairie Village, Kansas.

RECORD AND STIPULATIONS

The Appeals Board (Board) has considered the record and has adopted the stipulations listed in the Award.

ISSUES

The Administrative Law Judge (ALJ) awarded claimant a 54 percent permanent partial general disability based on a work disability for an August 7, 1998, work-related accident. At the time of the accident, claimant had been employed by the respondent at its plant in St. Joseph, Missouri since the spring of 1996. As a result of the accident, claimant suffered permanent injury to her right shoulder, right hand, and low back. After claimant was released to return to work with permanent restrictions, respondent was unable to accommodate those restrictions and claimant was terminated.

On appeal, respondent contends the Kansas Workers Compensation Act does not apply to the parties because claimant was injured outside the state of Kansas and the contract of employment was not made within the state of Kansas.

In contrast, claimant requests that the Board affirm the Award. The claimant argues she proved she was hired at the respondent's office located in Atchison, Kansas, after she

was tested to determine her qualifications for the job. Claimant further argues that the telephone conversation that she had with respondent's representative Jim Williams from her home in Clarinda, Iowa, was only for the purpose of Mr. Williams notifying her as to which plant location she would work at and was not an offer of employment.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

After reviewing the record, considering the briefs and the parties' arguments, the Board makes the following findings and conclusions:

In the spring of 1996, claimant lived in Clarinda, Iowa. At that time, she lost her job at Eaton Corporation due to a reduction-in-force layoff where she worked as a computer numerical controlled horizontal boring (CNC) machine operator. The CNC machine was a specialized machine that makes large truck transmission gears. Claimant applied for employment with respondent because it also made large truck transmission gears on CNC machines and needed operators. Respondent had plants located both in Atchison, Kansas, and St. Joseph, Missouri.

Respondent required claimant to be tested and interviewed in order to assess whether claimant was qualified to operate the CNC machine. The testing and the interview took place at the respondent's plant location in Atchison, Kansas. At the regular hearing, claimant first testified that respondent's representative Jim Williams offered her the job as a CNC machine operator after she was tested at the Atchison, Kansas, location. But on cross examination, claimant later testified that Mr. Williams called her in Iowa a week or two after she was tested. During that telephone conversation, Mr. Williams first advised her that another one of respondent's officials did not want to hire claimant because she was too short. Mr. Williams then asked claimant her height. Claimant replied, "I'm the same height as Napoleon, and look what he got done." Mr. Williams' response to that statement was, "You be down there Monday morning, you have a job."¹ On further cross examination, claimant was asked, "So the true memory then, and what actually happened, is you got the job offer over the phone when you were in Iowa?" Claimant replied, "Yes."²

On claimant's August 7, 1998, accident date, she was employed by respondent in St. Joseph, Missouri, and the accident occurred at respondent's St. Joseph, Missouri plant. Because claimant's accident occurred outside the state of Kansas and claimant's place of employment was also outside the state of Kansas, in order for the Kansas Workers Compensation Act to apply to the parties, the contract of employment had to be made within the state of Kansas.³

¹ Regular hearing transcript, March 27, 2001, p. 42.

² Regular hearing transcript, March 27, 2001, p. 44.

³ See K.S.A. 44-506.

A contract is considered “made” when and where the last act necessary for the contract’s formation is completed. The act of acceptance of an offer, during a telephone conversation, is “made” where the acceptor speaks the acceptance.⁴ Here, the Board concludes that claimant failed to prove her contract of employment with respondent was made in Kansas. The Board is unable to find it is more probable true than not that claimant accepted a job offer from respondent while she was in Kansas or that respondent accepted an offer from claimant from its office located in Atchison, Kansas. This conclusion is supported by claimant’s testimony that she received the job offer during her telephone conversation with respondent’s representative Jim Williams. Additionally, claimant agreed she did not know whether she had the job with respondent until Mr. Williams made the job offer to her during the telephone conversation when she was located in Iowa.

The Board, therefore, finds that the ALJ’s conclusion that the contract of employment between claimant and respondent was made in Kansas is reversed. Accordingly, Kansas does not have jurisdiction over this accidental injury and the Kansas Workers Compensation Act does not apply.

AWARD

WHEREFORE, it is the finding, decision, and order of the Board that ALJ Robert H. Foerschler’s August 3, 2001, Award is reversed because the Kansas Workers Compensation Act does not apply.

IT IS SO ORDERED.

Dated this ____ day of July 2002.

BOARD MEMBER

BOARD MEMBER

BOARD MEMBER

⁴ Neumer v. Yellow Freight Systems, Inc., 220 Kan. 607, Syl. ¶ 2, 556 P.2d 202 (1976).

c: Michael Matteuzzi, Attorney for Claimant
John B. Rathmel, Attorney for Respondent
Robert H. Foerschler, Administrative Law Judge
Philip S. Harness, Workers Compensation Director